IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP NO.16146 of 2006

DATE OF DECISION: November 27, 2006

M/s RMDK Projects Pvt. Ltd.

….Petitioner

VERSUS

State of Haryana and others

….

Respondents

CORAM:- HON'BLE MR. JUSTICE VINEY MITTAL
HON'BLE MR. JUSTICE H.S. BHALLA

PRESENT: Shri Raj Kumar Gupta, Advocate for the petitioner.
Shri Ashok Jindal, Additional Advocate General, Haryana for the respondents.

Viney Mittal,J.

The petitioner company has approached this Court challenging the order dated July 7, 2005 (Annexure P.4) passed by Haryana State Development Corporation Limited (hereinafter referred to as the respondent Corporation), whereby the plot allotted to the petitioner company was ordered to be resumed as well as the order dated January13,2006 (Annexure P.6) passed by the Appellate Committee, whereby the appeal filed by the petitioner company was dismissed.

The petitioner company is engaged in the manufacture of Pre-fabricated knock down furniture and fixtures for supplying to various departmental stores and super markets etc. For the purposes

of setting up the manufacturing unit, it applied for allotment of an industrial plot in Industrial Estate at IMT Manesar. The respondent Corporation treated the petitioner company as fully eligible for such allotment and consequently allotted plot No.136 in sector 6 of the Industrial Estate IMT Manesar measuring 1012.50 square meters. A regular letter of allotment was issued in favour of the petitioner company on January 23, 2001. It is the specific case of the petitioner company that the entire sale consideration, including all the instalments, with regard to the said plot have already been paid by the petitioner company and no further amount is due and payable on that account. Although the petitioner company maintains that the actual physical possession of the plot in question was required to be offered to the petitioner company after making the necessary developments, but the respondent Corporation did not hand over the said possession but the said fact is disputed by the respondent Corporation. According to the petitioner company, till February 2004, the aforesaid possession was not so delivered and, in these circumstances, the petitioner company addressed a communication dated February 4, 2004 (Annexure P.2) to the respondent Corporation to hand over the physical possession so that the petitioner company could proceed with the construction and commencement of the project. According to the petitioner company, possession of the plot was till not handed over. Another communication dated February 15, 2005 (Annexure P.3) was addressed by the petitioner company to the respondent Corporation again requesting for delivery of possession of the plot in

question and undertaking that if the aforesaid possession was delivered, the

petitioner company would commence the construction immediately and proceed with the commencement of the project. However, an order dated July 7, 2005 (Annexure P.4) was received by the petitioner company, whereby the aforesaid plot was ordered to be resumed. The only reason on account of which the resumption of plot was ordered was non commencement of the project. The aforesaid communication (Annexure P.4) further reveals that the Corporation had maintained that the petitioner company had approached the respondent Corporation for taking over the possession of the plot in question on February 4, 2004 and even at that point of time the possession had not been taken over by the petitioner company.

Aggrieved against the aforesaid resumption order, the petitioner filed an appeal before the Appellate Committee. The appeal filed by the petitioner company has been dismissed by the Appellate Committee vide an order dated January 13, 2006 which was conveyed to the petitioner company on April 19,2006. The aforesaid Appellate order is Annexure P.6 on the record. The orders Annexures P.4 and P.6 are subject matter of challenge by the petitioner company through the present petition.

The claim of the petitioner company has been contested by the respondents. A written statement has been filed on behalf of respondents No.2,4 and 5. In the written statement, the factum of the petitioner company having deposited the entire sale consideration has

not been denied. However, it was maintained that the actual physical possession of the plot was offered to the petitioner company on

January 1, 2002 but the said possession was not taken over by the petitioner company even after the expiry of three years. According to the respondents, the petitioner company was required to start construction within a period of one year from the date of offer of possession i.e. upto December 31, 2002 and with an extension of one year period i.e. upto December 31, 2003 without any extension fee and further extension of six months i.e. upto June 30,2004, on payment of extension fee. The respondents have pleaded that since the petitioner company had failed to implement the project within three years from the date of offer of possession, therefore, the resumption order passed qua the plot was wholly justified and in these circumstances the appeal was also justifiably dismissed by the appellate committee.

We have heard Shri Raj Kumar Gupta, the learned counsel appearing for the petitioner company and Shri Ashok Jindal, the learned Additional Advocate General, Haryana appearing for the respondents and with their assistance have also gone through the record of the case.

It is not in dispute that the plot in question was allotted to the petitioner company vide allotment letter dated January 23, 2001 (Annexure P.1) for a total consideration of Rs.15,18,750/-. It is also not in dispute that the entire sale consideration of the said plot has already been paid by the petitioner company and on that account, no

further amount is due and payable by the petitioner company. However, there is a serious dispute between the parties as to whether

the actual physical possession of the plot in question was handed over to the petitioner company in the year 2002, as claimed by the respondent Corporation or as to whether the said possession has not been delivered so far, as maintained by the petitioner company.

Shri Raj Kumar Gupta, the learned counsel appearing for the petitioner company has specifically drawn our attention to the communication (Annexure P.2) dated February 4, 2004 addressed by the petitioner company to the Corporation, whereby a request was made to hand over the actual physical possession of the plot. In this regard, Shri Gupta has also drawn our attention to the specific averments made in paras 7 and 8 of the writ petition. Our attention has also been drawn to a subsequent communication (Annexure P.3) dated February 15, 2005. Shri Gupta has maintained that the aforesaid specific averments made in the writ petition and receipt of the aforesaid communications (Annexures P.2 and P3) has not been denied by the respondent Corporation in their written statement. In these circumstances, it has been argued by the learned counsel that the petitioner company had specifically undertaken before the respondent Corporation also that if the actual physical possession of the plot in question was delivered to the petitioner company and a period of six months was only granted, then the petitioner company would be in a position to complete the construction and commence

the project. In these circumstances, the learned counsel for the petitioner company

has argued that the resumption of the plot in question was wholly unjustified and uncalled for.

On the other hand, Shri Ashok Jindal, the learned Additional Advocate General, Haryana appearing for the respondents has relied upon the averments made in the written statement to the effect that the possession of the plot in question was handed over to the petitioner company on February 1, 2002. On that basis, the learned counsel has argued that once there was a default on behalf of the petitioner company in implementing the project within the stipulated period, then the resumption order was wholly justified.

Having given our due consideration to the rival claims made by the parties and taking into consideration the contentions of the learned counsel appearing for them, we are satisfied that keeping in view the facts and circumstances of the case and also the fact that the entire price of the plot in question stands already paid by the petitioner company to the respondent Corporation, it would be in the interest of justice that the petitioner company is granted one final opportunity to implement the project.

Consequently, we allow the present petition and quash the resumption order as well as the appellate order (Annexures P.4

and P.6, respectively). We further direct that without going into the fact as to whether the actual physical possession of the plot in question had earlier been handed over to the petitioner company or

not, the same be handed over to the petitioner company now within a period of one month from the date a certified copy of this order is received. If any further amount is due and payable by the petitioner company, a communication in this regard shall be sent to the petitioner company by the respondent Corporation.

On delivery of physical possession and on receipt of the aforesaid communication with regard to outstanding dues, if any, the petitioner company shall within a further period of four weeks make the payment of all the aforesaid outstanding dues. Thereafter, the petitioner company shall submit the building plans for requisite approval to the competent authority. The competent authority shall grant the requisite approval to the aforesaid building plans. On receipt of the aforesaid approval, the petitioner company shall raise the requisite construction for the industrial unit within a period of six months of the receipt of the requisite approval of the plans and thereafter commence the industrial production within a further period of three months. We, however, make it clear that if there is any further default by the petitioner company of the aforesaid directions, then the present petition shall be deemed to have been dismissed and in such a situation, the resumption order shall stand revived.

We may also note that a similar view was taken by this Court in identical circumstances in CWP No.4530 of 2005 (M/s. Jaisi Designs New Delhi through its partner v. Managing Director and others), decided on July 4, 2006.

The learned counsel appearing for the petitioner company has informed us that a Special Leave Petition against the said judgment has already been dismissed by the Apex Court.

A copy of the order be given dasti on payment of charges for urgent copies.

(Viney Mittal)
Judge

November 27, 2006
KD

(H.S. Bhalla)
Judge